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Edward Elgar
2017-11

Paloniitty , T M 2017 , Does it take three to tango? The practitioner's viewpoint to three EU governance instruments addressing the agricultural runoff dilemma . in E J Hollo (ed.) , þÿ W a t e r R e s o u r c e s M a n a g e m e n t a n d t h e L a w . E d w a r d E l g a r , C h e l t e n h a r

http://hdl.handle.net/10138/310475
https://doi.org/10.4337/9781785369834.00024

unspecified
acceptedVersion

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Does It Take Three to Tango?
The Practitioner's Viewpoint to Three EU Governance Instruments Addressing the Agricultural Runoff Dilemma

Abstract

The EU has had a multi-faceted approach in addressing agricultural runoff, specifically when relating to the eutrophication of the Baltic Sea. Here three EU policies and instruments—the Common Agricultural Policy (the 'CAP'), the Water Framework Directive (the 'WFD') and the EU Strategy for the Baltic Sea Region (the 'SBSR')—are examined within the framework of the legal system of Finland with the aim to scrutinize the practical legal and normative ramifications of these governance tools. It is suggested that even when the SBSR has agricultural runoff as its *ratio moderatio*, its implications at the practical level are limited. The results of the CAP are more tangible in the practitioners' lives but at the same time they are far from cost-effective. The 'post-Weserian' normativity of the WFD ought to result in legally binding water quality standards for individual undertakings but the procedural question lingers: as long as the agricultural emissions are not within the scope of any environmental permitting procedure, implementing the norm may require further modifications of the administrative procedures, at least in those Member States having agricultural water pollution as a significant environmental concern.

1 Introduction

The EU has had a multi-faceted approach in addressing agricultural runoff, specifically when relating to the eutrophication of the Baltic Sea: the Common Agricultural Policy[1] ('CAP'), the oldest of the endeavours, was followed in 2000 by the Water Framework Directive[2] ('WFD') and its combined approach to pollution sources. Most recently the EU Strategy for the Baltic Sea Region[3] ('Strategy', 'SBSR') was inaugurated as a representative of macroregional governance having agriculture as its *ratio legis*—or rather, when noting the limited legal stringency of the apparatus, *ratio moderatio*. In what follows, the policies and instruments are examined in the legal system of Finland – country that is one of the main culprits behind the poor condition of the sea—with an aim to scrutinize the practical legal and normative ramifications of these governance tools. How do their implementation restrict the individual practitioner's right to exploit and cultivate his or her land? Does the latest amendment or transformation of EU water law—namely the so-called Weser ruling (CJEU C-461/13)[4] the European Court of Justice ('Court', 'CJEU') gave in summer 2015—have an impact also on the WFD's combined approach to water pollution and thus also the regulation of agricultural runoff? What are the practical effects of the financial or environmental protection instrument, the CAP, to the farmer—or to the water quality?

Examination of these questions begins with taking a look at the Strategy and its consequences for practical agricultural undertakings. Second, the CAP is studied with an objective of finding out whether its reforms have 'greened' agricultural undertakings and,

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[1] The EU legislation on CAP has been issued in four regulations (colloquially referred to as pillars) on rural development, horizontal issues, direct payments, and market measures. See respectively Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L347/487; Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) 485/2008 [2013] OJ L347/549; Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L347/608; and Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001, and (EC) No 1234/2007 [2013] OJ L347/671.

[2] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [2000] OJ L327/1 (hereafter WFD)

[3] Presidency Conclusions of the Brussels European Council (29/30 October 2009), 15265/1/09 REV 1; Communication concerning the European Union Strategy for the Baltic Sea Region, COM(2009) 248 final (hereafter Strategy).

[4] Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland* [2015] ECR I-433 (*Weser* -case).

also, the efficacy of the instrument when compared to the monetary input. Third, the WFD is put in the limelight: its current tendencies towards legal normativity is explained and then evaluated whether this new normativity can be implemented to the diffuse pollution source called agricultural runoff. In the final section, the influences of the three governance instruments are summed up, especially from the viewpoint of the practitioner. The question raised is: which governance tools, if any, have an impact on farming practices or the farmers' daily undertakings?

2 The Strategy and Agriculture as *Ratio Moderatio*

The Council approved a strategic road map, the EU Strategy for the Baltic Sea Region, in 2009, followed by the Commission's communication on the matter.[5] The EU developed the approach focusing on regions as an attempt to balance the enlargement and with external relations in mind.[6] The Commission presented the Strategy in 2009 after a joint drafting process with the stakeholders and the Member States. Interestingly, the results of the collaborative process were virtually congruent, all participants favouring an integrated and multi-sectoral approach.[7] What integration in this context refers to is a contested question but can be summarized as understanding that regional drivers of growth are distinct but interdependent.[8]

The Baltic region was a natural choice for a territorial cohesion project: its nature as a geographical space between the international and national levels is so well established that analytical concepts such as 'meso-' or 'macroregion' or a definition of 'peripheral subregion' describe the region well. Macroregion, the most established of these concepts, refers to 'a meso-level bringing together a group of units that are at the same time part of (or related to) a

[5] Strategy (n 3).
[6] Kristine Kern, 'Governance for Sustainable Development in the Baltic Sea Region' (2011) 42(1) *Journal of Baltic Studies* 21, 22. The history of cooperation in the region can be dated back to the era of the Hanseatic League, ibid., 29.
[7] The Strategy (n 3) 1, 4. Similar strategy processes are also ongoing in the Danube region, the Adriatic-Ionian region and the Alpine region, see respectively the Communication concerning the European Union Strategy for the Danube Region, 08.12.2010 - COM(2010) 715 final, the Communication concerning the European Union Strategy for the Adriatic and Ionian Region - 17.06.2014 - COM(2014) 357 final, and the Communication concerning the European Union Strategy for the Alpine Region - 28.7.2015 - COM(2015) 366 final. There have been deliberations whether collaboration in e.g. the North Sea or Carpathian regions might evolve into formal macroregional strategies. The latest evaluations are, however, rather hesitant and careful. See DG Internal Policies Policy Department B, 'New role of Macro-Regions in European Territorial Cooperation', IP/B/REGI/FWC/2010_002/LOT02-C01/SC01 (2015), 73–4, and Annex, 100–101.
[8] For a summary of the questions which emerged, see Tamás Kaiser, 'The added value of the integrated approach: the case of Hungary' (Conference on the EU Strategy for the Danube Region: Challenges and Chances 2014–2020) (2015) 100, 102.

more comprehensive political entity'.[9] Irrespective of the used label, the Baltic Sea is undisputedly the most established area for co-operation in Europe and has the longest tradition in the field.[10] That is not to say that the Baltic Sea region would be a homogenous area, rather the contrary: regarding socio-economic factors the region is a heterogeneous one. The key common feature is the highly polluted sea shared by the littoral states.[11]

These features add to the Baltic Sea region's suitability to a macroregional governance approach, macroregional governance being a step forward from territorial-based governance to functional governance. The functional aspect is present in the Strategy especially with regard to agricultural runoffs and the sea, and one of the justifications underpinning the Strategy is addressing the issue in an integrated manner throughout the whole region.[12] Since macroregional governance must have at least one shared problem that justifies the governance apparatus, this key problem could be called *ratio moderatio* (ex analogia to *ratio legis*). That would make the state of the Baltic Sea the *ratio moderatio* of the Strategy.

Irrespective of the disparities during the Strategy's drafting process, the environmental aspects remained a key feature, establishing the first of four pillars in the Strategy. The Strategy is presented in four pillars for structural purposes only, their order or arrangement is not supposed to convey any independent meaning—on the contrary, the Commission encourages seeing the four pillars as entwined, as an integrated approach suggests.[13] Within these environmental concerns, the question of nutrient runoffs was the first, others dealing with biodiversity protection, hazardous substances, clean shipping and climate change mitigation and adaption.[14] The Strategy is accompanied by a list of priority areas. Out of a total of 17 groups two are on agriculture: the first on sustainable agriculture in

[9] Stefan Gänzle and Kristine Kern, 'Macro-region, 'Macro-regionalization' and Macro-regional Strategies in the European Union: Towards a New Form of European Governance?' in Stefan Gänzle and Kristine Kern (eds), *A 'macro-regional' Europe in the Making: Theoretical Approaches and Empirical Evidence* (Palgrave Macmillan 2016) 3, 5.
[10] Stefan Gänzle, 'Introduction: Transnational Governance and Policy-Making in the Baltic Sea Region' (2011) 42(1) Journal of Baltic Studies 1, 1, 4.
[11] Alexandre Dubois et al., *EU macro-regions and macro-regional strategies – A scoping study* (Nordregio 2009) 43, 25-9, <http://www.nordregio.se/Publications/Publications-2009/EU-macro-regions-and-macro-regional-strategies/> accessed 5 December 2016.
[12] Gänzle and Kern (n 9) 3.
[13] The Strategy (n 3) 6.
[14] The other three being economic prosperity; accessibility and attractiveness; and safety and security, Jonathan Metzger and Peter Schmitt, 'When Soft Spaces Harden: The EU Strategy for the Baltic Sea Region' (2012) 44(2) Environment and Planning A 263, 272.

general and the eleventh on nutrient runoffs to the sea.[15] Even though the order of the pillars is not decisive in any regard and the priority list is flexible and reviewed on a regular basis, the structure supports the claims that the position of agri-environmental causes in the Strategy is strong.[16] As planned, the priority list was updated in 2015.

The relation between the Strategy and the work of HELCOM is of interest. The Helsinki Convention and HELCOM as its secretariat have aimed at improving the ecosystem of the Baltic Sea since the 1970s. It is an aptly named intergovernmental steering body when it comes to cooperation concerning environmental issues.[17] HELCOM's main objective is an environmental one: to protect, restore and enhance the marine ecosystem that is notoriously fragile and polluted.[18] Even though the efficacy of its work has been discussed, its significance as a regional network has not.[19] HELCOM represents intergovernmental tradition, partly due to its age—HELCOM was initiated during the strong East-West divide. Even though frames of mind change more slowly than societal systems emerge and collapse, transnational governance and collaborative actions were better equipped after the end of the East-West divide, especially so in the environmental and economic sectors. HELCOM's leading role in intergovernmental activities has later been enhanced with other environmental initiatives which also wish to include private and non-governmental actors in the governance processes, a development which has earned the Baltic region the title of the laboratory for environmental governance.[20]

The environmental collaboration appears in networks defined by the theme, resulting in overlapping participation—one organization can be and often is a member of multiple networks each having its own, distinct political influence. It is notable concerning the agricultural runoff problem that organizations aiming to tackle the dilemma do not form one single (regional or environmental) network but many. The aim of these organizations might be unanimous but the way in which they interact in the developments of normative or

[15] The Strategy (n 3) 3, 6–7 and The SBSR priority areas, 1, <http://ec.europa.eu/regional_policy/sources/cooperate/baltic/doc/priority_areas.pdf> accessed 5 December 2016.
[16] Rikard Bengtsson, 'An EU Strategy for the Baltic Sea Region: Good Intentions Meet Complex Challenges' (2009) 9 European Policy Analysis 1, 3-4.
[17] Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention); Gänzle (n 10) 2. Even though non-binding, recommendations are HELCOM's main policy tool; Stacy D. VanDeveer, 'Networked Baltic Environmental Cooperation' 42(1) Journal of Baltic Studies 37, 40, also serves as a short summary of HELCOM, its working practice and place in the network of operators.
[18] Kern (n 6) 26-7.
[19] Gänzle (n 10) 4-5.
[20] Coalition Clean Baltic, Union of the Baltic Cities, and Baltic Sea Action Group being some of them, Gänzle (n 10) 4-5; Kern (n 6) 23-4. An extensive even though still partial list of environmental initiatives in the area is given in Table 1 of VanDeveer (n 17) 37.

scientific data varies. This flux of influence and dense networks makes measuring their impact difficult: even if the development of a concrete matter occurs, pinpointing the development to the actions of a certain organization or network is nearly impossible. This challenge has not gone unnoticed and the role of implementation and efficacy has gained weight among the goals of the actors.[21] This also applies to the improvements of environmental quality.

However, the multitude of actors and initiatives coupled with the difficulty of establishing cause and effect patterns have prompted questions about the Strategy's rationality, especially due to its emphasis on agri-environmentality.[22] Being built on 'three noes' has raised questions whether the Strategy can bring any added value to the region—the 'three noes' sum up the reality that the European Commission accepted no new institutions, legislation, or instruments while initiating or implementing the Strategy.[23] From the Union's perspective due to the 'three noes' all value from the strategies is added value, since no significant input is required. Regarding the relation between HELCOM and the Strategy, the Commission found that HELCOM has not been successful enough in finding support from all relevant sectors. This is due to HELCOM's notoriously environmentalist approach, which has caused, for example, the agricultural sector to shy away from HELCOM's work. In the Commission's view the Strategy has succeeded better in this regard; the Strategy's cross-sectoral approach has proved worthwhile.[24]

Even when the Strategy does not allow for new institutions or legislation, it nonetheless is a form of new governance, and as such questions of legitimacy are justified. Multi-level and multi-functional governance apparatuses are at risk of being vague or equivocal, a logical consequence of the fact that the results of the strategies are hard to evaluate. Accountability can be established as a 'master value' securing the legitimacy of the governance actions taken—in the case of the Strategy, it would be ruled as ineffectual without the accountability of those responsible for the agricultural runoffs.[25] However, the macroregional sphere necessitates a redefinition of accountability from its legal counterpart:

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[21] VanDeveer (n 17) 38-9.
[22] Bengtsson (n 16) 6.
[23] Metzger and Schmitt (n 14) 272–3.
[24] Other strategic benefits were the ability to tackle issues shared in a certain region but not in the whole Union, Á Kelemen, 'Assessing the added value of macro-regional strategies – Environment Discussion paper', 46, in the Commission Staff Working Document - 27.6.2013 - COM(2013) 468 final—a stance directly quoted in European Commission 2013, 6.
[25] Rasmus Kløcker Larsen and Neil Powell, 'Making Sense of Accountability in Baltic Agro-Environmental Governance: The Case of Denmark's Green Growth Strategy' (2013) 33(2) Social and Environmental Accountability Journal, 71, 72, 75, <http://dx.doi.org/10.1080/0969160X.2012.743276> accessed 5 December 2016.

due to the large number of parties involved accountability is seen to be more of a 'work-in-progress', a continuous process between different actors, existing in their discussions and exchanges and being also itself subject to constant change. This understanding of accountability is comprehended as the only sensible one when it comes to macroregional governance: since the terrain itself is flexible and in constant evolution, amendments to the understanding of accountability must also be made. That means that accountability is seen as a part of this unending process of various actors and acts, not as a dipstick used to evaluate the process.[26]

The Strategy can be taken to represent an *interactionist* perspective by admitting that multiple interests are at stake in the agricultural runoffs issue, contradictory even to the extent of colliding, and that the Strategy is the balancing tool to settle the predicament. This description is deemed the most suitable since in the Strategy eutrophication is not a problem to be tackled but a dilemma that needs to be balanced. Also, other solutions taken into the Strategy enhance this interpretation: the Strategy is an operation between different actors and their viewpoints, not an endeavour to enhance scientific knowledge itself or justify decisions merely based on scientific information. [27]

The different analyses and viewpoints examined above share an understanding of the Strategy: in all its flexibility predicting its efficacy is if not directly impossible, at least a challenge, but even so the Strategy seems to deserve its place in the laboratory of governance that is the Baltic Sea region. However, due to the 'three noes' approach it can hardly have an influence in the practitioner's daily life, if participating as a stakeholder is not included. Time will tell how the Strategy influenced the Baltic Sea's environmental status—now such evaluations would be premature given the slow cycles of environmental and socio-political change.

3 'Greening the CAP' or Blue-Greening the Sea?

The Common Agricultural Policy has been EU's prime policy field for over half a century, also and especially budget-wise—over the years the CAP has been eating up as much as 70 per cent of the community budget.[28] During its lengthy history in EU policy-making the CAP

[26] The authors readily admit that the promulgated understanding of accountability is not in congruence with normative responsibility or the strictly legal understanding of the concept, ibid., 75–6.
[27] Ibid., 77–9.
[28] The title of the chapter refers to the newest CAP reform, known as 'Greening the CAP' and concurrently also to the result of agricultural runoffs, eutrophication and blue-green algae, one of its outcomes. For an excellent historical and overall review of the CAP, see David Harvey, 'What does the history of the Common Agricultural

has undergone a number of repairs: in order to contextualize the newest reform and the aspirations attached to it a short examination of these repairs follows.

Remodelling done in the late 1980s is known as the MacSharry reform; later ones are the Agenda 2000 and Fischler reforms. Methodologically speaking, analysing the three has proved to be a challenge when one standard tool for policy research, discourse analysis, has not been considered adequate: during the earlier years, policy makers were not expected to justify their actions to the same extent than is the case later in history.[29] Most explanatory force has been found by combining multi-level, multi-functional and multi-lateral approaches in order to grasp an overall picture of the policy change.[30] However, already turning to multi-functional analysis construes a shift in the agricultural regulation research, since its aim is to incorporate agriculture as a field of industry into environmental law. The general objective of the approach is to regulate the environmental impacts of agriculture as with the point-source polluters.[31] However, in the absence of more suitable solutions, in what follows multi-functional analysis is also considered to be an agreeable one.

In the MacSharry reform the agri-environmental issue was an unconventional approach—all but market imbalance or price support factors were conventional.[32] Perhaps due to these broadened horizons the MacSharry reform has been described as 'the most important CAP reform until that time'.[33] The international trade negotiations of the era, viz. the Uruguay Round of the GATT, strongly influenced the reform: it has been suggested that the MacSharry reform accommodated the negotiation's twists and turns.[34] Thus, in terms of multi-lateral analysis, the GATT negotiations not only affected matters at their own level but

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Policy tell us?' in Joseph A. McMahon and Michael N. Cardwell (eds), *Research Handbook on EU Agricultural Law* (Edward Elgar 2015).

[29] Isabelle Garzon, *Reforming the Common Agricultural Policy: History of a Paradigm Change* (Palgrave Macmillan 2006) 7.

[30] Ibid., 8–9. The multi-level players inf the field range from the Member States via EU organizations to the international level; multi-functional alludes to the various issues at stake; and the multi-lateral aspect deals with the bargaining involved.

[31] Massimo Monteduro, 'Environmental Law and Agroecology: Transdisciplinary Approach to Public Ecosystem Services as a New Challenge for Environmental Legal Doctrine' (2013) 22(1) European Energy and Environmental Law Review 2, 5. Naturally, multi-functional analysis also has other objectives, the aims of the analysis being multiple, but the diversity does not account for the underpinning methodological issue. Monteduro defines the aim of incorporation to be at least thirty years old.

[32] Garzon (n 29) 51. Finding environmental causes as a novelty in the 1990s might be slightly surprising, since environmental concerns had been in the public knowledge for already a good 20 years. The explanation goes that environmentality influenced the Union agriculture policy before the MacSharry reform but was only incorporated into the CAP then. Garzon (n 29) 53–4.

[33] Arlindo Cunha and Alan Swinbank, *An Inside View of the CAP Reform Process: Explaining the MacSherry, Agenda 2000 and Fischler Reforms* (OUP 2011) 68.

[34] Ibid., 72, 100.

also as a horizontally-connected issue to the reform.[35] Interestingly, the producers' interest groups were the only part of civil society coercing the discussions.[36] It must not hence come as a surprise that in the MacSharry reform agri-environmentality was not a decisive matter but a novelty.

The weight of civil society augmented in and during the negotiations of the next reform, known as Agenda 2000.[37] Not only did the producers' organizations diversify but environmental groups also mobilized themselves, partly due to the new practice according to which environmental concerns were to be assimilated into all Union policies.[38] Budgetary stringency was rudimentary as were considerations on cohesion, that is to say issues emerged along with the prospective enlargement of the Union.[39] In this round, rural development was taken into the CAP by incorporating the agri-environmental measures into the second pillar of the CAP.[40] In general, Agenda 2000 has been recalled either as a disappointment or as a reform of modest outcome. Regarding agri-environmentality, there might be more to the story than mere dissatisfaction: Agenda 2000 enlarged the space of the environmental NGO's in the negotiation process and as such filled its niche in the sequel of reforms.

The negotiations for the third of the previous reforms, the Fischler reform, commenced shortly after Agenda 2000 was compiled.[41] Some hitherto elementary issues, such as budgetary rigour, were not advanced in the Fischler round whereas others, such as agri-environmentality, continued to improve their position. The latter was due to the increased significance of civil society after severe food crises and, also, an acknowledgement of the impact Union agriculture had on developing countries—as if the Union food policy started to develop a conscience.[42] In spite of that, the diversification of the value base in the CAP negotiations was concretized in the Fischler reform: in this round not only food security but also environmental security were fully considered in the process. However, the broad choice of implementation options given to the Member States might have diluted the

[35] Garzon (n 29) 74.
[36] Garzon (n 29) 75.
[37] Agenda 2000 was seen as a package of measures preparing the Union for enlargement and other novelties the new century might bring, Cunha and Swinbank (n 33) 115.
[38] Garzon (n 29) 88-90.
[39] Garzon (n 29) 93, 95.
[40] Harvey (n 29) 19, Garzon (n 29) 54.
[41] Berlin European Council 24–25 March 1999 Presidency Conclusions, paras 19 and 20.
[42] E.g. ethical issues started to have a say, Cunha and Swinbank (n 33) 126, Garzon (n 29) 99-100. The international dimension paid a significant role in this reform: the Doha Agreement in 2001 caused external pressures, and this time the future prospects of agreements in agricultural policies between e.g. the US and the EU were at stake, ibid. Garzon 100-101.

results—the Fischler reform has been nicknamed *the cafeteria CAP*[43]—but at least there was something to be diluted!

Studies of the CAP over the past 20 years have noted that the earlier reforms consist of three different discourses: productivist, neo-liberal and multi-functional.[44] Shortly put, the first-mentioned emphasizes the food security and farm income function of agriculture, the second is willing to admit more diverse functions of the industry, and the last focuses on the internal and external pressures this highly capitalized field faces, rising retrospectively from the Union budget negotiations and international trade negotiations.[45] The three discourses promptly represent the 'holy trinity' of the CAP. Interestingly, the environmental causes are deemed to be a diversificator of (the allegedly) previously stable and (apparently also) unbiased situation, posing as a telltale sign of the assumptions where the funding of food production can be detached from the environment in which the food is produced.

The Commission started the negotiations for the most recent reform with a document entitled 'Greening the CAP'.[46] Even though this reform known by the name of Commissioner Cialoş is rather fresh and crisp, it has already been examined whether it was worth its nickname by studying whether and how the discourses used were transformed into policy processes and instruments.[47] It was found that the new direct payment scheme was justified using multi-functional discourse in which the environmental aspects were highlighted. The same combination of discourses was also present in the later negotiations on the CAP reform. Discourses on the basic payment scheme were apparently 'blank', including mainly bureaucratic formulations or numbers. Nevertheless, the researchers were able track down traces of productivist discourse—an interpretation seconded by commentators who found the main purpose of the reform was a justification of the excessive spending on agriculture.[48]

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[43] Alan Greer, *Agricultural Policy in Europe* (Manchester University Press 2005) 208, Cunha and Swinbank (n 33) 133.

[44] Even though discourse analysis of the earliest negotiations has been challenging to undertake, credible results have been sourced from other reforms, see text at (n 29).

[45] Karmen Erjavec and Emil Erjavec, ''Greening the CAP' – Just a fashionable justification? A discourse analysis of the 2014–2020 CAP reform documents' (2015) 51 Food Policy, 53, 55.

[46] Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future (COM 2010 672 final); Cordula Rutz, Janet Dwyer and Jörg Schramek. 'More New Wine in the Same Old Bottles? The Evolving Nature of the CAP Reform Debate in Europe, and Prospects for the Future' (2014) 54(3) Sociologia Ruralis 266.

[47] Harvey (n 29) 24; Erjavec and Erjavec (n 45) 54, 56. On the procedural side, enhanced monitoring and evaluation have been found to be needed in the 'greening' process, see David Baldock, 'Twisted together: European agriculture, environment and the Common Agricultural Policy' in Joseph A. McMahon and Michael N. Cardwell (eds), *Research Handbook on EU Agricultural Law* (Edward Elgar 2015), 130; simultaneously, however, increasing the costs in the form of compliance checks, Harvey (n 29) 36.

[48] Erjavec and Erjavec (n 45) 57, Harvey (n 29) 24.

Thus the 'greening' seems to come into question only after the basic level of production and income are secured: significant amounts of productivist discourse was utilized to justify support measures for young farmers, coupled payments and flexibility options for direct payment systems.[49]

It might, however, be unwise to hasten to a conclusion that the greening of the CAP can be equated with white – or green – washing it. It took as late as the 1990s for environmental concerns to be a novelty, a new aspect starting to make its way into the decision-making process of the financial distribution tool. The CAP consists of trade, food supply and security, and environmental causes, all of which have their own objectives in the decision-making process. In retrospect, the progress and position of environmental concerns is evident. The same conclusion is reached when the distribution of funds was taken into account in the policy analysis. After assigning measures into certain discourses and comparing their share of the total CAP budget it was found that productivist discourse accounted for 60 per cent of it. Multi-functional discourses earned 30 per cent of the total, while neo-liberalist discourses were almost non-existent. While the 'greening' of CAP was the key element in multi-functional discourse, one might not exaggerate when saying that its share in the end result is greater than in the earlier versions of the CAP. A danger of oversimplification lingers, though: earlier CAP reform coupled 'greening' elements with payments, and, also in the latest reform, greening is arbitrary.[50] Also, when it comes to the CAP reform(s), the language in the policy documents does not necessarily condense into equivalent measures and budget distributions.[51]

It is thus relatively safe to declare that over the course of the decades the CAP has showed signs of greening: ecological considerations have emerged from the borders and arrived at the centre of policy-making. Another question is whether the money is effectively spent at the Member State level whilst implementing the CAP. The efficacy of the spending in relation to the environmental quality of the Baltic Sea can be examined using economic tools and such studies were also conducted in Finland before the newest reform. In counterfactual analysis, the focal point is the link between the money spent on agri-environmental programmes and the environmental benefits gained with the funded measures. The results of the 'social cost-benefit analysis' were rather discouraging: the environmental

[49] Erjavec and Erjavec (n 45) 58-9. The outcome has also been explained by the order of events: after securing the budget and Pillar I, support for the environmental issues in Pillar II underwent a long haul, Baldock (n 47) 148.
[50] In the reform of 2003, cross compliance rules were introduced to direct payments, and were an element of 'greening'.
[51] Erjavec and Erjavec (n 45) 61.

gains of reduced nutrient runoffs were considerably less than the money spent.[52] The result is less surprising when one notes that over the years that Finland has had its agri-environmental programme the amounts of nitrate runoffs have increased, not decreased, contradicting the programme's aims.[53] Even when there might be justified reasons to oppose cost-benefit analyses in policy research, for analysing benefit distribution a cost-benefit analysis nonetheless suits well.[54]

The complexity of the CAP makes clear answers concerning its effectiveness difficult. Ecological realities steer the evaluator in the same direction: since nutrients in water ecosystems compound, eutrophication is caused not only by current or recent emissions but also by emissions from previous years, even decades back that have become sedimented in the seabed. The complexity of the issue is thus multifaceted and makes evaluating the efficacy of the current—or earlier—measures, in economic analysis or otherwise, especially troublesome. The CAP, however, strongly influences the farming practices in the Member States, Finland included, by also being the main source of administrative work for the practitioners. Even when the results of the CAP or the efficacy of it might be controversial, its impact on the practitioners' lives and practices is robust: part of the compensation from their work comes in the form of financial subsidies distributed within the CAP regime. Thus, the claim that CAP, unlike the previously studied Strategy, has had a tangible influence on the practitioner's life.

4 Combining the WFD's Newly-found Normativity with Its Combined Approach

The examination moves now from financial tools and governance mechanisms towards the realms of 'the legal': the WFD in its contemporary mien. Could the WFD cover the needs for normativity in the field, could—or should—its newly-found normativity have an impact on the individual farmer's undertakings? After all, WFD Article 10 requires employment of a

[52] Jussi Lankoski and Markku Ollikainen, 'Counterfactual approach for assessing agri-environmental policy: Theory with an application to Finnish water protection policy' (56) 2011 University of Helsinki, Department of Economics and Management Discussion Papers. The latest Union-level implementation report suggests improvement, even though uncertain ones, Report from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2008–2011 (COM/2013/0683 final).

[53] The amounts of soil phosphorus have increased in some parts of the country, also proving the inefficacy of the programme, Lankoski and Ollikainen (n 52) 5.

[54] S. A. Shapiro and C. H. Schroeder, 'Beyond cost-benefit analysis: A pragmatic reorientation' (2008) 32(2) Harvard Environmental Law Review, 433.

combined approach to all pollution sources, diffuse and point-source alike, and in Article 10(2)(c) mentions the best environmental practices as one mechanism in which the approach should be instigated.[55] How binding are these articles, legally speaking?

Land-based water pollution from agriculture is a prime example of the ecosystems' holistic reality, namely the fertilizers used in cultivation run off to the nearby waters and eventually to the sea. From the 1970s on these holistic ecosystems have been researched and managed using an adaptive management paradigm, a nowadays dominant nature resources management theory which also underpins the WFD.[56] Adaptive management systems are complex and resilient and as such they have proved to be a trial for regulators—lawyers have recoiled from adaptive management as it fundamentally contradicts predictability and certainty.[57] Regulating adaptive management is a challenge, especially in civil law systems that orbit rules—at most discussing their interpretation or characteristics, but never relinquishing their elementary position in the system. Much-debated principle or rule distinctions or dialogue over flexible norms might have enlivened the discourse, but one thing stays adamant: predictability is part of the law's epistemology.[58]

The incomparability of adaptive management and the normative is obvious when it comes to the regulation of large-scale adaptive water management, well illustrated by the Water Framework Directive, which has received much criticism from scientists, managers, and legal scholars, including claims that the WFD does not make the best use of ecological knowledge. In the WFD the ecological status of a water body is defined with biological 'quality elements', classified by scientists in the Member States and unified at the EU level. However, when gauging the 'good ecological status' of waters, these elements are actually secondary features—quality is more about structures and processes of aquatic ecosystems

[55] WFD Article 10(3) reaffirms that the WFD does not allow for any deterioration from the previous water quality requirements or emission controls set out in earlier EU legislation. It is also noted at the political level that lack of compatibility between the WFD and the CAP may explain the poor achievement of the former's objectives. European Commission *A Blueprint to Safeguard Europe's Water Resources* Brussels, 14.11.2012 COM(2012) 673 final, 4 and William Howarth, 'Integrated water resources management and the European Union's Common Agricultural Policy' in Joseph A. McMahon and Michael N. Cardwell (eds), *Research Handbook on EU Agricultural Law* (Edward Elgar 2015), 246–7, 250, who couples the failure to the fact that the WFD as a whole regulates water quality rather that quantity, ibid. Howarth 260.

[56] The oft-cited C.S. Holling and others have been credited for initiating the paradigm shift from previous natural resources management, which in its practicality was less attached to the complexity of ecosystems, C. S. Holling (ed), *Adaptive Environmental Assessment and Management* (Wiley-Interscience, 1978) 377.

[57] For an excellent analysis of the law's relation to adaptive management, see e.g. Bradley C. Karkkainen, 'Adaptive Ecosystem Management and Regulatory Penalty Defaults: Toward a Bounded Pragmatism' (2002) 87 Minnesota Law Review 943; Bradley C. Karkkainen, 'Collaborative Ecosystem Governance: Scale, Complexity, and Dynamism' (2002) 21 Virginia Environmental Law Journal 189.

[58] This fact is shared by both common and civil law systems. What differ are their mechanisms for balancing predictability and flexibility and the struggles involved in the task.

rather than the presence or absence of single elements.[59] In the WFD the aim is that the quality of all water bodies should not deteriorate and that they should attain a good ecological status, objectives which are meticulously defined in the directive (Art. 4(1) and Annex V). Law scholarshave expressed interest in this 'good status' objective, deliberating over its normative impetus.[60] The so-called 'non-deterioration' principle has shied away from the limelight: it has been commonly understood to refer to the quality of EU waters at the time the Directive was issued.[61]

4.1 The WFD in the Court's Reading

In 2015, in the Weser ruling by the European Court of Justice, this interpretation of the 'non-deterioration' principle was shown to be mistaken. The nature of adaptive management did not hinder the European Court of Justice from turning to legal formalism in its assessment of the Directive. In the Weser case the Court had its chance to have a say on the normativity of the established management system. Concurrently, the Court resolved the most suitable mode of regulation for adaptive water management, as far as its scope of review and limits of discretion allowed.[62] But as always with EU law, enforcement lies in the hands of the Member States, which are thereby also responsible for enforcing the legal state the Weser ruling established.

Regarding the Directive, the original enforcement was variegated: the Member States opted for a variety of implementation strategies. The Member States' understanding of the normativity of the 'good status' objective might have been either the *objective of best effort* or the *objective of result*, or an amalgamation of both.[63] Implementation of the WFD in Finland is an invigorating example of these variations: in Finland, what is taken into a river basin management plan ('the RBMP') 'shall be taken into account' in legal and administrative procedures relating to environmental matters.[64] Due to the country's

[59] A thorough analysis of these questions is provided by Henrik Josefsson and Lasse Baaner's, 'The Water Framework Directive—A Directive for the Twenty-First Century?' (2011) 23(3) Journal of Environmental Law 463.
[60] Andrea M. Keessen et al., 'European River Basin Districts: Are They Swimming in the Same Implementation Pool?' (2010) 22(2) JEL 197; J. J. H. van Kempen, 'Countering the Obscurity of Obligations in European Environmental Law: An Analysis of Article 4 of the European Water Framework Directive' (2012) 24(3) JEL 499.
[61] William Howarth, 'Aspirations and Realities under the Water Framework Directive: Proceduralisation, Participation and Practicalities' (2009) 21 JEL 391, 411.
[62] *The Weser* -case (n 4).
[63] Keessen et al. (n 60), 206.
[64] Finnish Environmental Protection Act (n:o 527/2014) 51 § and Finnish Water Act (587/2011) Chapter 3, 6 §, both sections part of the regulation on the permit consideration. The Environmental Protection Act still lacks its

geographical realities as a 'land of a thousand lakes', the demands of the EU water law are found to be especially pressing, tentatively also explaining the original reluctance to give normative clout to the WFD.

The preliminary reference that prompted the Weser ruling was skilfully established that the questions set would focus solely on the normativity of individual undertakings. The preliminary reference gave the Court latitude at deliberating how the 'good status' objective and the non-deterioration principle ought to be interpreted and how they relate to individual undertakings and their authorization.[65] The referring court insisted especially on the meaning and significance of the status classifications: the referring court wished to know which aspect of this process was decisive when defining the acquisition of the 'good status' objective.[66] Unlike the preceeding scholarly literature, the Court did not employ a distinction between the objectives of best effort and the objectives of result in its reasoning, but referred to two distinct but intrinsically linked obligations taken into the Directive: *the obligation to prevent deterioration* and *the obligation to enhance*.[67] The Court continued with the understanding that the obligations came into being because of deliberate choices of the Union legislator, and hence protecting their normativity best served the legislator's intention. Thus the Member States must refuse authorizing projects that might undermine the attainment of the said objectives, providing no exemption is granted according to the Article 4(7).[68]

The second aspect in which the Court parted from the scholar's ponderings was its focus on the non-deterioration principle.[69] It established the principle as an independent key objective of the Directive. To achieve such an interpretation the Court dismissed the popular 'status class' theory as one with merely instrumental value and opted for the 'status quo' version instead.[70] Here the Court differentiated from the previous comprehension for the third time: instead of understanding the 'status quo' as one that prevailed at the time the Directive was issued, the Court understood 'status quo' to refer to the highest water quality achieved at

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formal English translation, but the unofficial English version of the Water Act is available online: <http://www.finlex.fi/en/laki/kaannokset/2011/en20110587.pdf> accessed 5 December 2016.

[65] The request for a preliminary ruling, *The Weser* -case (n 4).

[66] WFD, Annex V, ss 1.3. and 1.4.1. Much of the criticism the Directive has gained is rooted in aspects of this mechanism, see e.g. Baaner and Josefsson (n 59).

[67] *The Weser* -case (n 4) para 39.

[68] *The Weser* -case (n 4) paras 22, 50–51. The obligation prevails irrespective of the Member State's possible negligence in compiling the programmes of measures, which include the definitions of 'good status' objectives, i.e. data according to which the deterioration is assessed.

[69] The non-deterioration principle has been noted but often not further elaborated since it has usually been interpreted as applying only between statuses or to the most severe cases, such as agricultural runoffs. See, for example, van Kempen (n 60) 527–28; Keessen and others (n 60) 210–12.

[70] *The Weser* -case (n 4) para 52 and, in more detail, Case C-461/13 Bund v Germany [2015] ECR I-433, Opinion of AG Jääskinen, para 90.

any point of time.[71] Hence the quality of a waterbody does not meet the desired objective whenever deterioration occurs and, consequently, deterioration of the waterbody becomes accessible only when derogation is granted.

When giving full normative clout to the environmental objectives and the non-deterioration principle the Court in other words imposed traditional, formalistic legal logic on the adaptive water management regime: in the Court's reading the environmental objectives are legal norms in the strictest sense and should be interpreted as such.[72] The EU water quality law now includes clear rules and as with any rule, there is also the possibility of exemptions. Due to the WFD's integrated and holistic approach as well as its desire for a combined approach, agricultural runoffs are equally part of the newly-established demands of increasingly stringent water quality demands. In particular, the new normativity of the non-deterioration principle may be a challenge to implement, and not only regarding agricultural runoffs. The reasons behind the Court's stance related to the long traditions and established notions of water law. As AG Jääskinen stated, 'the concept of deterioration is a well-established concept of water law, having a general, rather than technical or detailed scope'. In other words, the Court attempted to distance itself from the much-criticized technicalities in the WFD and examine the issue from a broader perspective.

4.2 Individual Agricultural Undertakings, the Scope of Derogation and Environmental Permitting

As always, when legal formalism is in question, alongside of clear rules comes the question of exceptions. The conditions on which derogation can be granted are listed in the WFD Article 4(7).[73] It is noteworthy that the exception clause only applies to new endeavours causing a decline in water quality. Thus, if an existing activity is replaced with a new one and the detrimental effects remain equal or diminish, no exemption is needed.[74] This rudimentary aspect of the derogation regime sets the stage for a mechanism that could be called 'replacement measures'. These are the measures applied when a novel undertaking in a

[71] *The Weser* -case (n 4) para 55.
[72] *The Weser* -case (n 4) ruling paras 1–2; Tiina Paloniitty, 'The Weser Case: Case C-461/13 BUND V GERMANY' (2016) 28(1) JEL 151, 159.
[73] Article 4(7) is not the only derogations regime established in the Directive. Article 4(3) on artificial or highly moderated waterbodies can be understood as one mechanism for ensuring the environmental quality objectives. Also Articles 4(4)–(5), which regulate the extensions granted for deadlines and the possibility of altering the environmental objectives, can be understood as leeway mechanisms.
[74] Common Implementation Strategy for the Water Framework Directive (2000/60/EC), Guidance Document No. 20, Guidance Document on Exemptions to the Environmental Objectives. Office for Official Publications of the European Communities 2009, 24.

certain river basin district buys out existing establishments with detrimental effect, in order to ascertain that the water quality either improves or remains in status quo. Another variation is that the project that causes detrimental effect is coupled with activities that improve the water quality in the said river basin district, causing the overall level of the assessed quality elements not to deteriorate.

Both these possibilities predict an interesting future for the agricultural industry. As a field of industry it is often among the biggest pollutants but in terms of individual farms it is a small player. Moreover, the rudimentary issue of agricultural runoffs not falling under the scope of any environmental permit again becomes relevant: the pollution from agricultural activities is not evaluated in environmental permits.[75] Since the river basin management plans include all activities impacting the waters, agriculture is however included in the assessments and the fulfilment of the environmental objectives. Coupling this reality with the WFD's normativity, and especially its derogation regime, becomes increasingly important now when the total pollution load has become ever more important. In a standard situation when deciding upon derogations the non-deterioration principle and the good status objective are treated differently: a derogation can be granted if the proposed undertaking causes detrimental effects due to 'new modifications to the physical characteristics of a surface water body' or when the status of a surface water body is estimated to deteriorate from 'high' to 'good' by an endeavour that is deemed sustainable.[76]

Thus a novel undertaking may be granted an exemption to cause effects resulting in the plunge from 'good status' only if the deterioration is not caused by emission but by direct physical alterations of the water body. Detrimental effects caused by the emission-pollution mechanism can be exempted only when statuses above 'good' are in question, providing that the undertaking is pronounced sustainable.[77] This reality might cause increasing tensions in the watershed between different actors, all of whom cause water pollution and only some fall into the scope of environmental permits.

Could agriculture as a field of industry be eligible for exemption? Apart from the two general notions mentioned above, there are four more qualifications to be fulfilled if derogation is desired. Exemption from the rules is to be treated as a last resort, the reasoning

[75] Parts of agricultural production, e.g. animal shelters exceeding a certain headage, are regulated as point-source polluters in the IE Directive (Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17, 17–119) but the distribution of manure to fields as fertilizer is not taken into account when considering the said permits. In Finland, the regulations are taken into the Environmental Protection Degree (713/2014) 2 § 11a).
[76] The WFD Art 4(7).
[77] The WFD Art 4(7).

behind the planned modifications must be detailed in the RBMP's, and conditions such as technical feasibility or disproportionate cost must not allow for a significantly better environmental option.[78] The fourth condition is the most complex one. According to Article 4(7)(c), reasons such as human health, safety or sustainable development might outweigh the attainment of the non-deterioration principle or the good status objective: the Article establishes a weighing and balancing mechanism to the exception regime. It is worth noting that weighing and balancing here is not a general 'pro and con' adjudication with no strings attached but a considerably more restricted activity between the attainment of the set objectives in Art. 4(1) and benefits for human health, safety, or sustainable development. Only 'an overriding public interest' makes this weighing and balancing unnecessary. That being the case, the condition of Art. 4(7)(c) concerns to the public interest only and all other requirements can be omitted.

Article 4(7) employs broad concepts, all familiar elsewhere in environmental law: health and safety, public interest, and sustainability, but the article offers no further advice on interpretation. Since the case law on the WFD is yet to develop its own guidelines, some analogical aid can be sought from the case law of nature directives, especially the Habitats Directive[79], a pivotal piece of EU nature conservation legislation utilizing similar concepts in its endeavour. The Habitats Directive established a Union-wide network of Natura 2000 areas, aiming to safeguard ecosystems from endangering developments.[80] Article 6(4) of the Habitats Directive regulates the exemptions from the protection, allowing administrative permissions to undertakings with 'imperative reasons of overriding public interest'—social and economic ones included—when alterative solutions are not available. The derogation regime in the Habitats Directive thus loosely resembles the one created in the WFD. The significance of the planned project to economic development and employment has been taken into account in a harbour case in Hamburg, Germany[81]; also elsewhere the severe employment situation and harsh economic conditions have been decisive when ruling in favour of an undertaking.[82] In Rotterdam, the Netherlands, a major port was again granted an

[78] The WFD Art 4(7)(a)–(b), (d).
[79] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7.
[80] Ibid. Article 6(3).
[81] Commission Opinion of 6.12.2011 delivered upon request of Germany pursuant to Art. 6(4) sub par. 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, concerning the deepening and widening of the ship fairway Unter- and Außenelbe (river Elbe) to the port of Hamburg (Germany), 6.12.2011 C(2011) 9090 final.
[82] Opinion of the Commission of 24/04/2003 Delivered upon request of Germany according to Art. 6 (4) Sub Par. 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats as well as the

exemption due to its importance to the EU transport network.[83] When deciding upon an artificial lake development in notoriously dry southern Europe, securing a water supply for local and regional water consumption, agriculture and industry have been determining factors, providing again that other feasible solutions have been absent.[84] Thus the planned projects must have *significant* benefits before derogation could be granted—and only a notion this general can be condensed on the scope of derogation at the EU level.

The agricultural industry's standing in the 'post-Weserian' EU water law thus seems to be rather multifaceted. To begin with, the environmental objectives of the WFD are made legally binding in individual undertakings—but agricultural water pollution lacks the administrative-legal procedure in which this norm could be imposed upon it. The strict legal norms now in the WFD come with exceptions for significant undertakings in which dire public interest is involved. Domestic food production might be effortlessly counted as one significant undertaking in many Member States but, unfortunately only as a field of industry, not if individual farms are evaluated separately. Had the Member States permission granting systems for land-based pollution the farms would be evaluated individually, and none of them would fall under the scope of derogation according to the WFD Article 4(7). As a result, the regulation of agricultural runoffs might be against the newly-established norm of non-deterioration but mechanisms to enforce the norm are absent.

5 Agricultural Water Pollution in the Triangle of Influence, Finances, and Normativity

From the agricultural practitioner's point of view the EU Strategy for the Baltic Sea Region has proven to be relevant mainly as a channel for stakeholder participation, and has no tangible influence on the daily life of a practitioner. Its role as a balancing act, however, is significant, giving a voice to previously silenced stakeholder groups and bringing a new, presumably more impartial terrain for discourses about the development of the region. The

wild animals and plants, concerning the approval of an operational master plan ('Rahmenbetriebsplan') of the Prosper Haniel Colliery operated by Deutsche Steinkohle AG (DSK), for the period 2001-2019, 24.4.2003.

[83] Opinion of the Commission delivered pursuant to Article 6.4 § 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats and of wild fauna and flora (Habitats Directive), concerning the "Request by the Netherlands for advice and exchange of information with the European Commission within the framework of the Birds and Habitats Directives", in relation to the "Project Mainport Rotterdam" Development Plan, 24.4.2003.

[84] Opinion of the Commission pursuant to Article 6.4 § 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, concerning the "Request by the Kingdom of Spain in relation to the La Breña II reservoir project." C(2004)1797, 7.5.2004 (only the proposed opinion is made available).

importance of these features should not be dismissed. The CAP, then again, is as practical in its aims as possible: more or less the whole of a farmer's income consists of the financial aid distributed according to its varied schemes, no matter to what extent the aims of the programme would acknowledge something else or how much this reality is called 'unequivocally both de facto and de jure misguided'.[85] However, the efficacy of the CAP has been criticized, its proved results in enhancing environmental quality being somewhat narrow. The criticism must nonetheless be read with a full understanding of the ecological underpinnings, namely the reality of nutrients becoming concentrated in the seabed.

Then again the WFD especially in its 'post-Weserian' form might serve the needs of efficacy and bring results for anyone desiring that water quality be enhanced and polluters be held accountable. However, the diffuse nature of pollution would seem to escape the above-described new normativity of the environmental quality objectives: as long as agricultural runoffs do not fall under the scope of any administrative procedure aiming to control environmental pollution, the farming practices and their consequences circumvent the normativity of EU water quality regulation. Since agricultural runoffs and other diffuse pollution sources are often the most significant reasons behind the failure to attain the desired environmental quality the 'post-Weserian' EU water law leaves agricultural pollution in a tight spot: it *de facto* acts as a hindrance or even obstacle for permitting other undertakings, resulting in a lack of mechanisms to counteract the situation. Given that the norm the Court established in the Weser ruling is rigorously implemented in the Member States, those struggling with the agricultural runoffs issue are likely to come up with some counterbalancing mechanisms in order to enable a variety of societal undertakings with water impacts.

[85] Harvey (n 29) 34, who fiercely proscribes that the CAP would, could, or should be supporting farm incomes. This has never been the openly expressed objective of the scheme, nor do the economic theories underpinning the programme allow for that interpretation. However, in actual reality the subsidies granted in the CAP schemes result in financial means being transferred from the Union to the farmers, a reality which prevails irrespective of how many logical steps from theory to practice one needs to take to acknowledge the state of affairs.